

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**August 24, 2001**

**IN RE:**

**JOINT PETITION OF CROCKETT TELEPHONE  
COMPANY, INC., PEOPLES TELEPHONE COMPANY,  
WEST TENNESSEE TELEPHONE COMPANY, INC.,  
AND THE CONSUMER ADVOCATE DIVISION OF  
THE OFFICE OF THE ATTORNEY GENERAL  
FOR THE APPROVAL AND IMPLEMENTATION  
OF EARNINGS REVIEW SETTLEMENT**

**DOCKET NO.  
99-00995**

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**ORDER**

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This matter is before the Pre-Hearing Officer upon the filing of a Memorandum of Understanding by Crockett Telephone Company, Inc., Peoples Telephone Company, West Tennessee Telephone Company, Inc. (collectively "the TEC Companies") and AT&T of the South Central States ("AT&T") on May 8, 2001 and other filings related to the intervention of AT&T in this docket. Also pending before the Pre-Hearing Officer is a Motion for Summary Judgment filed by the Consumer Advocate Division of the Office of Attorney General ("Consumer Advocate") seeking the dismissal of AT&T from this proceeding. Upon reviewing the record in this matter, particularly the Memorandum of Understanding and the Motion for Summary Judgment and filings of the parties pertaining to those documents, the Pre-Hearing Officer determines: (1) that the Motion for Summary Judgment be denied; (2) that the request for approval of the Memorandum of Understanding be denied; and (3) that the Settlement

Agreement between the TEC Companies and the Consumer Advocate be addressed in a proceeding as set forth in greater detail this Order.

### **Background**

This matter came before the Tennessee Regulatory Authority (“Authority”) upon the January 12, 2000 filing of the *Joint Petition of Crockett Telephone Company, Inc., People’s Telephone Company, West Tennessee Telephone Company, Inc. and the Consumer Advocate Division of the Office of the Attorney General for Approval and Implementation of Earnings Review Settlement* (Joint Petition”).<sup>1</sup> On December 10, 1999, AT&T filed a *Petition of A&T Communications of the South Central States, Inc. for the Convening of a Contested Case* (“Complaint”) concerning the regulation of the rates of the TEC Companies.<sup>2</sup> AT&T’s Complaint was filed prior to the filing of the Joint Petition by the TEC Companies and the Consumer Advocate. On January 14, 2000, AT&T filed a Petition for Intervention (“Petition”) in this docket. In its Petition, AT&T stated that it had filed its earlier Complaint in an attempt to “have an opportunity to participate fully in the determination of the overearnings of the TEC Companies, including the source thereof, the design of rates to compensate for such overearnings and the determination of any just and reasonable rates for the TEC Companies.”<sup>3</sup> AT&T also stated that if its intervention in this docket was granted, then Docket No. 00-00021 should be consolidated with this proceeding. On January 31, 2000, the Consumer Advocate filed a Motion to Dismiss AT&T’s Petition to Intervene in this docket.

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<sup>1</sup> The TEC Companies had previously filed a Settlement Agreement with the Authority on December 30, 1999 in response to a letter of December 6, 1999 from the Authority requesting said filing. The letter accompanying the Settlement Agreement stated that the TEC Companies and the Consumer Advocate would file a joint petition at a later date seeking the Authority’s approval of the Settlement Agreement.

<sup>2</sup> AT&T’s petition to convene a contested case was originally assigned Docket No. 99-00956 when filed, but was later reassigned to Docket No. 00-00021.

<sup>3</sup> *Petition for Intervention of AT&T Communications of the South Central States, Inc.* (January 14, 2000), pp. 3-4.

At a regularly scheduled Authority Conference held on February 1, 2000, the Directors voted unanimously to open a contested case in this matter and grant AT&T's Petition for Intervention thereby rendering moot the Consumer Advocate's Motion to Dismiss. The Directors also appointed General Counsel or his designee to act as Pre-Hearing Officer to prepare this matter for hearing and determine the issue of whether to consolidate Docket No. 00-00021 (AT&T's Complaint) with this docket.<sup>4</sup> On March 7, 2000, the Consumer Advocate filed its *Motion for Summary Judgment Dismissing AT&T's Complaint Against TEC's Proposed Rate Design because AT&T's Proposed Design is not in the Public Interest or, in the Alternative, for Transfer to the Access Charge Reform Docket* ("Motion for Summary Judgment") and supporting Memorandum. On March 23, 2000, AT&T filed its Reply to the Motion for Summary and served the TEC Companies and the Consumer Advocate with discovery requests. On April 26, 2000, the Consumer Advocate filed a list of proposed issues. The TEC Companies and AT&T each filed lists of issues on June 5, 2000. This matter was set for a Pre-Hearing Conference on March 17, 2000, which was postponed on March 14, 2000. In response to the April 12, 2000 letter, a Pre-Hearing Conference was rescheduled for April 28, 2000. On April 24, 2000 the TEC Companies filed a motion to change the date of the Conference due to scheduling conflicts. Pursuant to the TEC Companies' request, and without objection from the parties, the Conference was re-scheduled for June 2, 2000. The June 2<sup>nd</sup> Conference was postponed at the request of the TEC Companies and re-scheduled for June 9, 2000, pursuant to a Notice issued on May 30, 2000.

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<sup>4</sup> See Order Granting Intervention Petition of AT&T Communications of the South Central States, Inc., March 29, 2000.

### **June 9, 2000 Pre-Hearing Conference**

Pursuant to Notice, the first Pre-Hearing Conference was held on June 9, 2000, with Counsel Stephanie K. Tisdale presiding as Pre-Hearing Officer. In attendance at the June 9, 2000 Pre-Hearing Conference were the following parties:

Crockett Telephone Company, Inc., Peoples Telephone Company, West Tennessee Telephone Company, Inc. (the "TEC Companies") – **R. Dale Grimes**, Esquire, Bass, Berry & Sims PLC, 2700 First American Center, Nashville, TN 37238;

AT&T Communications of the South Central States, Inc. ("AT&T") – **Garry Sharp**, Company Representative,

Consumer Advocate Division, Office of Attorney General & Reporter ("Consumer Advocate") – **L. Vincent Williams**, Esquire, 2<sup>nd</sup> Floor, Cordell Hull Building, Nashville, TN 37243-0500.

As the Pre-Hearing Conference commenced, the Consumer Advocate expressed concern over the fact that an AT&T company representative, who was not a licensed attorney, was attending the Conference on behalf of AT&T. The AT&T representative explained that local counsel for AT&T had been unable to attend the Conference due to illness and that AT&T's in-house counsel from Atlanta, Georgia was not available. After inquiry by the Pre-Hearing Officer, the Consumer Advocate expressed concern that AT&T's representative might be practicing law by participating in certain parts of the Pre-Hearing Conference.

Counsel for the TEC Companies stated that he did not object to proceeding with the Pre-Hearing Conference but also shared the Consumer Advocate's concern. Both the Consumer Advocate and the TEC Companies offered that, instead of adjourning the Conference, the Pre-Hearing Officer could continue and discuss any non-legal matters in this proceeding. The Pre-Hearing Officer expressed concern that any agreements between the parties at the Pre-Hearing Conference might be subject to the protest stated by the Consumer Advocate.

During the Conference, the Pre-Hearing Officer made only the following determinations as to certain pending matters. The Pre-Hearing Officer ruled, without objection from any party, that Docket No. 00-00021 be consolidated with this docket. The Pre-Hearing Officer further determined that the Consumer Advocate's Motion for Summary Judgment be held in abeyance pending further filings by the parties.<sup>5</sup> The Pre-Hearing Officer directed each party to file comments as to each other's proposed list of issues by June 14, 2000. In accordance with the Pre-Hearing Officer's directive, the parties each filed comments on June 14, 2000. AT&T filed a Reply to the comments on June 19, 2000.

During the months following the June 9, 2000 Pre-Hearing Conference, the Pre-Hearing Officer was advised by counsel for the TEC Companies that, because BellSouth and the TEC Companies may enter into a new intraLATA toll compensation arrangement which could affect the overearnings situation, an amended petition might be filed by the TEC Companies and Consumer Advocate. On December 4, 2000, a Notice was issued setting a Status Conference for December 14, 2000 to determine the need for additional filings.

#### **December 14, 2000 Status Conference**

A Status Conference was held on December 14, 2000. Richard Collier presided as the Pre-Hearing Officer. In attendance were the following parties:

Crockett Telephone Company, Inc., Peoples Telephone Company, West Tennessee Telephone Company, Inc. (the "TEC Companies") – **R. Dale Grimes**, Esquire and **T. G. Pappas**, Esquire, Bass, Berry & Sims, PLC, 2700 First American Center, Nashville, TN 37238;

Consumer Advocate and Protection Division, Office of Attorney General & Reporter ("Consumer Advocate") – **Timothy Phillips**, Esquire, Cordell Hull Building, Nashville, TN 37243-0500;

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<sup>5</sup> The Consumer Advocate argued during the Pre-Hearing Conference that because there was no dispute of material facts, the Motion for Summary Judgment could be decided as an issue of law. The TEC Companies stated that although they did not file such a motion, they agreed with the Consumer Advocate's position that the issues raised by AT&T do not belong in this proceeding. Transcript of Proceedings, (June 9, 2000) pp. 17-18.

AT&T Communications of the South Central States, Inc. ("AT&T") – **Val Sanford**, Esquire, Gullet, Sanford, Robinson and Martin, PLC, 230 Fourth Avenue North, Third Floor, Nashville, TN 37219-8888.

During the Status Conference, the TEC Companies informed the Pre-Hearing Officer that, after consultation with the Consumer Advocate, the TEC Companies had determined not to file an amended petition but rather to proceed with the Joint Petition and Settlement Agreement as originally filed.<sup>6</sup> Also, during the December 14, 2000 Status Conference, the parties presented arguments as to whether AT&T should remain a party in this action. While AT&T requested that discovery be resumed, both the TEC Companies and the Consumer Advocate argued that the Motion for Summary Judgment should first be acted on to determine whether AT&T would be dismissed from this action or have its claim transferred to another proceeding pending before the agency.<sup>7</sup>

The TEC Companies also made a request that the Authority grant temporary relief in the form of an interim approval of that portion of the Settlement Agreement involving the contemplated increases in depreciation for the years 1999 and 2000. Counsel for AT&T objected to the request, arguing, in part, that the request had not been supported by any filing and had not been noticed for consideration during the Status Conference. The Pre-Hearing Officer directed the TEC Companies to present their request in written form to permit AT&T an opportunity to respond. On December 20, 2000, the TEC Companies filed a letter advising the Pre-Hearing Officer that they were withdrawing the issue and would not be filing such a request. On January 17, 2001, the Consumer Advocate filed a *Motion for Leave to File Reply Brief* and a

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<sup>6</sup> See Transcript of Proceedings (December 14, 2000) (Status Conference), pp. 4-5, 25-26.

<sup>7</sup> The TEC Companies expressed their support for the Consumer Advocate's Motion for Summary Judgment during the December 14, 2000 Status Conference. Transcript of Proceedings (December 14, 2000), p.10.

Reply Brief in support of its Motion for Summary Judgment. AT&T filed its Reply on January 25, 2001 to the Consumer Advocate's Motion for Leave.

Shortly thereafter the Pre-Hearing Officer was advised that the TEC Companies and AT&T were involved in settlement negotiations as to the issues existing between them. The Pre-Hearing Officer was subsequently asked to schedule a Pre-Hearing Conference for discussion of a proposed settlement between the TEC Companies and AT&T. A Pre-Hearing Conference was set for May 8, 2001.

**May 8, 2001 Pre-Hearing Conference**

At the May 8, 2001 Pre-Hearing Conference, the TEC Companies and AT&T presented a Memorandum of Understanding outlining a schedule of access rate reductions designed to resolve the issues raised by AT&T in its Petition for Intervention. Through the Memorandum of Understanding, the TEC Companies and AT&T proposed to amend the Settlement Agreement by re-allocating approximately \$215,000 of the overearnings identified therein from acceleration of depreciation expense to reductions in access rates for 2001, and due to the passage of time, to further amend the rate design described in the Settlement Agreement by extending the credits and charges identified therein beyond 2001 to allow for an orderly implementation of the Settlement Agreement. During the Pre-Hearing Conference, the counsel for Consumer Advocate objected to the proposed amendment of the Settlement Agreement to partially fund reductions in access rates by re-allocating a portion of the overearnings. The Consumer Advocate further stated that his office had not been involved in the negotiations between the TEC Companies and AT&T and orally raised several objections to the Memorandum of Understanding. After hearing from the parties concerning the potential effect of the Memorandum of Understanding on the Settlement Agreement, the Pre-Hearing Officer permitted the Consumer Advocate to file written

comments or objections and the TEC Companies and AT&T to respond thereto. On May 15, 2001, the Consumer Advocate filed the *Attorney General's Objection to the Proposed Memorandum of Understanding between TEC and AT&T Filed May 8, 2001*. The TEC Companies and AT&T each filed Reply Comments on May 22, 2001.

At this stage of the proceeding, the following matters remain for consideration:

1. The Consumer Advocate's Motion for Summary Judgment seeking to dismiss AT&T from the docket;
2. The Memorandum of Understanding between the TEC Companies and AT&T seeking to resolve the issues raised by AT&T in its Petition for Intervention; and
3. The Joint Petition of the TEC Companies and the Consumer Advocate seeking approval and implementation of the Settlement Agreement.

As set forth in detail hereafter, the Pre-Hearing Officer finds that this docket can be resolved most efficiently and expeditiously by: (1) denying the Motion for Summary Judgment and the Memorandum of Understanding, and (2) as to the Joint Petition, proceeding on the issues of (a) whether the amount of overearnings identified in the Settlement Agreement for the TEC Companies for the years 1999-2001 is correct; and, if so, (b) how and to what extent the rate design described in the Settlement Agreement should be amended to adjust for the overearnings identified therein.

#### **Motion for Summary Judgment**

In its Motion for Summary Judgment and supporting Memorandum filed on March 7, 2000, the Consumer Advocate asserts that AT&T's Complaint should be dismissed because there is no dispute of material fact that AT&T's proposed rate design benefits only AT&T, which is not in the interest of the TEC Companies' customers and is not "just and reasonable" under



Tennessee law.<sup>8</sup> Further, the Consumer Advocate argues that AT&T's claims should be barred under the doctrine of unclean hands because even though AT&T had alleged that the TEC Companies' rates are not "just and reasonable," there is no proof in the record that AT&T's own rates are just and reasonable or that AT&T's rate of return is unjust or unreasonable due to AT&T's access charge payments to the TEC Companies.<sup>9</sup> The Consumer Advocate also asserts that AT&T should be dismissed from this docket primarily because AT&T is raising issues related to access charge reform which, in the Consumer Advocate's view, are more appropriate for another proceeding before the Authority. The Consumer Advocate states:

The present case is all about the TEC companies and the money they owe their customers. Reducing AT&T's access rates has little to do with this focus. Instead, AT&T attempts to do here what it was denied earlier, gain a competitive advantage through access rate reduction in this docket when all other IXC's must wait for the conclusion of the Access Charge Reform Docket.<sup>10</sup>

The Consumer Advocate states that, in the alternative, AT&T's Complaint regarding access charges should be transferred to the Authority's Access Charge Reform Docket.<sup>11</sup>

In its Reply to the Consumer Advocate's Motion for Summary Judgment filed on March 23, 2000, AT&T argues that the Motion is without merit because the grounds asserted by the Consumer Advocate are not based on law but on rate design policy. AT&T considers the Consumer Advocate's "unclean hands" argument as frivolous and states that "no statute, rule, policy or principle requires AT&T to show that its rates are "just and reasonable" in order it to intervene in a contested case.<sup>12</sup> AT&T asserts that, as a customer of the TEC Companies

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<sup>8</sup> Consumer Advocate's Motion for Summary Judgment (March 7, 2001) pp. 1-2.

<sup>9</sup> *Id.*, pp. 2-3.

<sup>10</sup> *Attorney General's Reply Brief* (January 19, 2001) p. 2.

<sup>11</sup> *Id.*, p.4. The Authority's Access Charge Reform Docket is Docket No. 97-00889.

<sup>12</sup> *Reply of AT&T Communications of the South Central States, Inc. to Consumer Advocate Division's Motion for Summary Judgment* (March 23, 2000) p. 6.

contributing to the amount of overearnings experienced by the TEC Companies, it has a customer's right to be heard on the determination of the amount of overearnings and on the appropriate rate design to resolve any overearnings situation. AT&T also states that this case is separate and distinct from the generic access charge reform case because this case deals specifically with "the TEC Companies, a proper forecast rate of return, their overearnings and a proper rate design to adjust revenues for such overearnings."<sup>13</sup>

### **Findings and Conclusions**

The Pre-Hearing Officer finds that the Consumer Advocate's position which asserts that the reduction of AT&T's access rates is not directly related to the issues in this case, fails to take into account that an adjustment to access rates is one of several options that could be pursued in resolving an overearnings or underearnings situation. The Pre-Hearing Officer finds no support for the Consumer Advocate's argument that AT&T is seeking a competitive advantage through an access rate reduction in this docket when all other IXC's must wait for the conclusion of the Access Charge Reform Docket. If it is ultimately decided that the TEC Companies' access rates should be adjusted, that adjustment will be effective for all toll carriers that originate and terminate calls on the TEC Companies' networks – not just AT&T.

The Pre-Hearing Officer finds that, as an access customer of the TEC Companies, AT&T has a ratepayer's right to challenge the earnings and rate design of these rate-of-return regulated companies. Because the various rates charged by rate-of-return regulated companies are often based on policy rather than cost, it is impossible to identify, with certainty those rates that contribute directly to an overearnings or underearnings situation. Accordingly, ratepayers have an interest in the determination of earnings and in the development of an appropriate rate design to resolve an overearnings or underearnings situation. For these reasons, the Pre-Hearing Officer

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<sup>13</sup> *Id.*, p. 7.

concludes that AT&T should not be dismissed from this docket and therefore denies the Consumer Advocate's Motion for Summary Judgment.

**Memorandum of Understanding Filed by the TEC Companies and AT&T**

On May 8, 2001 the TEC Companies and AT&T filed their Memorandum of Understanding which, if approved, would essentially end AT&T's involvement in this case. The Memorandum of Understanding is dated March 30, 2001 and is signed by representatives of the TEC Companies and AT&T. The Memorandum of Understanding requires the TEC Companies to file with the Authority for approval "all proposed tariffs required to reduce the access charge rates for Transport Interconnection Charge ("TIC"), Carrier Common Line Charge ("CCL"), and Directory Assistance ("DA") Surcharge.<sup>14</sup> These tariffs would result in rates for TIC, CCL, and DA Surcharge being reduced in increments of twenty-five percent (25%) every six (6) months such that by January 1, 2003, the rates would be reduced to zero. In exchange for these reductions, AT&T agrees to "cease all activities and efforts to oppose" the Settlement Agreement of the TEC Companies and the Consumer Advocate filed in this docket.<sup>15</sup> In furtherance of this, AT&T agrees, upon approval of the above mentioned tariffs, to withdraw its Petition for Intervention.

On May 15, 2001, the Consumer Advocate filed its Objections to the proposed Memorandum of Understanding. In its remarks, the Consumer Advocate stated the following:

While the ramifications of the proposal are far-reaching, all aspects of its impact may not be realized at this time. It is quite obvious, however, that the proposal offers nothing to the ratepayers of the TEC Companies. It is a boon for AT&T and a brass attempt at an end-run around the Authority's review of these matters in other dockets presently open and active. The TEC Companies lose nothing and have obviously bargained away the ratepayers' credits.

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<sup>14</sup> See *Memorandum of Understanding* (May 8, 2001).

<sup>15</sup> *Id.*

The settlement agreement between TEC and the Attorney General's Office does the most to benefit the TEC ratepayers and for that matter, ratepayers period. The reduction of access charges to AT&T, Sprint, BellSouth, etc. goes straight to their bottom line, net income. With their impending deregulation by the legislature, AT&T is not compelled to flow through access reductions to any of the ratepayers of Tennessee. AT&T now has the opportunity to raise their long distance rates to cover the loss in margin from access charges due to the ILECs.<sup>16</sup>

On May 22, 2001, the TEC Companies responded to the Consumer Advocate's Objections, arguing the following:

Notably, the proposed settlement between TEC and AT&T had no effect whatsoever on the proposed customer credits nor any other customer benefits for the period under review, 1999 through 2001. When fully implemented in the year 2003, the rate reductions contemplated by the Memorandum of Understanding between TEC and AT&T will reduce earnings for the TEC Companies an aggregate \$1.8 million per year. Under these circumstances, it appears incorrect for the Consumer Advocate to assert that "[t]he TEC Companies lose nothing and have obviously bargained away the rate payer's credits."

. . . .

That original Settlement Agreement will require only minor amendments resulting from the Memorandum of Understanding between TEC and AT&T – primarily, the amount of depreciation increase for the year 2001 must be reduced by approximately \$215,000.00 and the overearnings for the period will be reduced by that amount. Other minor amendments to the Settlement Agreement will be required to extend the time for implementing the customer credits and other adjustments necessary for an orderly implementation of the Settlement Agreement due to the passage of time.<sup>17</sup>

In responding to the Consumer Advocate's Objections, AT&T asserts that the Consumer Advocate is merely repeating its arguments against AT&T's inclusion in this docket and that

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<sup>16</sup> *Attorney General's Objection to the Proposed Memorandum of Understanding Between TEC and AT&T Filed May 8, 2001* (May 15, 2001) at pp. 2-3.

<sup>17</sup> *Reply Comments of AT&T to the Attorney General's Objection to the Proposed Memorandum of Understanding Between TEC and AT&T Filed May 8, 2001* (May 22, 2001), pp. 3-4.

AT&T has already responded to those arguments in earlier filings.<sup>18</sup> AT&T states that the Memorandum of Understanding represents a compromise agreement arising out of negotiations between the TEC Companies and AT&T and does not affect the Settlement Agreement proposed by the TEC Companies and the Attorney General.<sup>19</sup>

### **Findings and Conclusions**

The Memorandum of Understanding presented by the TEC Companies and AT&T presents four concerns. First, the access rate reductions contained in the Memorandum of Understanding do not, for the most part, address the TEC Companies' estimated overearnings situation as described in the Joint Petition and Settlement Agreement filed in January, 2000. Under the Memorandum of Understanding only the first of four scheduled reductions in access rates will be partially funded from the current overearnings amount. The remaining three reductions set out in the Memorandum of Understanding will be funded from anticipated earnings. Although AT&T may have contributed to the estimated overearnings amount, the Memorandum of Understanding overreaches by staking out a customer's claim against potential, future overearnings that may never be realized. The Pre-Hearing Officer finds that AT&T's ratepayer rights simply do not reach that far.

Second, approval of the Memorandum of Understanding requires alteration of the earlier Settlement Agreement entered into between the TEC Companies and the Consumer Advocate because the funding for the first twenty-five percent (25%) reduction in access rates is generated, in part, by reducing the depreciation set forth upon in the Settlement Agreement. In its

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<sup>18</sup> *Reply Comments of AT&T to the Attorney General's Objection to the Proposed Memorandum of Understanding Between TEC and AT&T Filed May 8, 2001* (May 22, 2001) pp. 1-2.

<sup>19</sup> *Id.*, p. 2.

objections to the Memorandum of Understanding, the Consumer Advocate asserts that a portion of the estimated overearnings should be used to reduce the TEC Companies' rate base, which generally lowers rates by reducing future revenue requirements. AT&T claims that the same amount of estimated overearnings should be used to lower access rates for toll carriers. The Pre-Hearing Officer finds that this rate design question is best resolved through testimony from witnesses.

Third, the Pre-Hearing Officer concludes that the Memorandum of Understanding, in essence, results in an anticipatory allocation of future overearnings to fund access rate reductions. This conclusion is based on the following findings: (1) the TEC Companies may return to their current level of estimated overearnings after the Settlement Agreement is fully performed because the rate design proposed in the Settlement Agreement does not contain permanent reductions in rates<sup>20</sup> and (2) the amount of overearnings agreed upon in the Settlement Agreement is roughly proportionate to the negative revenue impact of the proposed access rate reductions.<sup>21</sup> Accordingly, if both the Settlement Agreement and the Memorandum of Understanding were approved, as submitted, the amount of anticipated overearnings identified in the Settlement Agreement would be consumed by future reductions in access rates as called for in the Memorandum of Understanding. As such, the Memorandum of Understanding places the TEC Companies in a position of depending on a certain level of future overearnings to make the agreed upon access rate reductions. If these overearnings are not realized, the TEC Companies' obligation to reduce access rates could place enough pressure on revenue requirements to cause

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<sup>20</sup> The rate design consists primarily of increasing certain amortization and depreciation expenses and giving business and residential customers certain billing credits.

<sup>21</sup> For the 1999-2001 attrition period, the average annual overearnings amount was \$2.1 million; whereas, full implementation of the access rate reductions identified in the Memorandum of Understanding will decrease annual revenues by an estimated \$1.8 million.

the TEC Companies to seek future rate relief from the Authority in the form of a rate case petition.

Finally, the Memorandum of Understanding requires the TEC Companies to reduce certain access rates to zero. The parties have provided no supporting documentation demonstrating the TEC Companies' cost of providing the access services identified in the Memorandum of Understanding. Notwithstanding the fact that the TEC Companies are rate-of-return regulated and are not bound by the statutory price floor set out in Tenn. Code Ann. § 65-5-208(c), the Pre-Hearing Officer questions the efficacy of potentially reducing rates below cost for intrastate access customers, such as AT&T and BellSouth Telecommunications, Inc., while requiring other classes of customers to make up the difference through their rates so that the TEC Companies can achieve their authorized rate of return. In the least, before any action is taken to approve such a proposal, the parties should be required to present testimony from their respective witnesses.

Based upon the foregoing findings and conclusions, the Pre-Hearing Officer concludes that the request of the TEC Companies and AT&T for approval of the Memorandum of Understanding must be denied.

#### **Joint Petition Seeking Approval and Implementation of Settlement Agreement**

Although the proposed Settlement Agreement includes rate design which included 1999, the Settlement Agreement was not filed with the Authority until December 30, 1999. The Joint Petition requesting approval and implementation of the Settlement Agreement was filed on January 12, 2000. Due to a number of factors, precipitated by events within and outside of the proceedings in this docket, the Joint Petition and underlying Settlement Agreement has not been acted upon and as such, the rate design proposed in the Settlement Agreement has not been

implemented. This rate design includes items such as the acceleration of certain depreciation and amortization expenses for 1999, 2000, and 2001; elimination of intracompany toll for 2000 and 2001; increasing the minutes for the Contiguous County Calling Plan for 2000 and 2001; waiver of nonrecurring charges for 2000 and 2001; and credits for residential and business customers for 2000 and 2001. Due to the passage of time, the parties recognize that this rate design cannot be implemented without amendment.<sup>22</sup>

Based on the foregoing findings, the Pre-Hearing Officer determines that this docket should proceed to determine the following issues: (1) whether the amount of overearnings identified in the Settlement Agreement for the TEC Companies for the years 1999-2001 is correct; and, if so, (2) how and to what extent the rate design described in the Settlement Agreement should be amended to adjust for the overearnings identified therein.<sup>23</sup> The Pre-Hearing Officer is of the opinion that consideration of these two issues establishes the proper framework for the proceeding and positions the case for appropriate resolution. Moreover, this process will allow for the determination of all the respective rights and interests of the parties in an orderly and timely manner.

### **Procedural Schedule**

The Pre-Hearing Officer hereby establishes the following procedural schedule for the filing of testimony on the two issues adopted herein:

- 1. September 7, 2001 – Direct Testimony– All Parties;**
- 2. September 14, 2001 – Rebuttal Testimony – All Parties;**

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<sup>22</sup> See Transcript of Proceedings of May 8, 2001, (Pre-Hearing Conference), pp. 5-7, 11-13.

<sup>23</sup> While the Pre-Hearing Officer recognizes that the parties individually submitted issues for consideration, the Pre-Hearing Officer concludes that these two issues are dispositive of the case. This conclusion does not ignore or discount the specific issues filed by the parties. In fact, based on review of the parties' lists of issues, the Pre-Hearing Officer finds that most of the issues articulated by the parties are encompassed by these two issues. Accordingly, adoption of these issues does not preclude the parties from bringing forth the positions subsumed in the filed issues at the appropriate time during the course of the proceeding.




**3. September 21, 2001 – Comments on Whether a Live Hearing is Needed.**


All filings shall be filed with the Executive Secretary of the Authority not later than **2:00 p.m.** on the date indicated and served on all parties on that date.

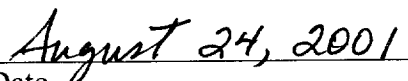
A hearing date will be set upon completion of the above procedural schedule, if necessary.

**IT IS THEREFORE ORDERED THAT:**

1. The Consumer Advocate's Motion for Summary Judgment is denied
2. The Memorandum of Understanding filed by the TEC Companies and AT&T is not approved;
3. This matter shall proceed to resolve the following two issues in succession:
  - (a) Whether the amount of overearnings identified in the Settlement Agreement for the TEC Companies for the years 1999-2001 is correct; and
  - (b) How and to what extent the rate design described in the Settlement Agreement should be amended to adjust for the overearnings identified therein.
4. The filing of testimony, as identified herein, shall proceed as established in the Procedural Schedule set forth in this Order:
5. Any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Pre-Hearing Officer fifteen (15) days from the date of this Order.

  
J. Richard Collier, Pre-Hearing Officer

  
K. David Waddell, Executive Secretary

  
Date